

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter
Norma McKanna
Cynthia A. Kitlinski
Robert J. O'Keefe
Darrel L. Peterson

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Rosemount
Cogeneration Joint Venture, Biosyn Chemical
Corporation, and Oxbow Power Corporation
for an Order Resolving a Dispute with
Northern States Power Company

ISSUE DATE: September 2, 1988

DOCKET NO. E-002/CG-88-491

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On July 19, 1988, Rosemount Cogeneration Joint Venture and its general partners, Biosyn Chemical Corporation (Biosyn) and Oxbow Power Corporation (Joint Venture or Petitioners) filed a Petition with the Minnesota Public Utilities Commission (the Commission) under Minn. Stat. Section 216B.164 (1986). The Joint Venture asked the Commission to resolve disputes between Northern States Power Company (NSP) and the Joint Venture relating to NSP's purchase of electricity and capacity to be provided from the Joint Venture's operation of a qualifying cogeneration facility (the Facility) to be located in Rosemount, Minnesota. Specifically, the Joint Venture asked the Commission to compel NSP to honor the terms of a contract which provides for the purchase and sale of electrical energy and capacity made available by the Facility to NSP.

NSP and Biosyn had executed an Agreement on January 3, 1986 providing that NSP would buy and Biosyn would sell cogenerated electrical energy and capacity from the Facility under the terms and conditions specified therein. The Agreement was amended on April 1, 1986 and was assigned by Biosyn to the Joint Venture on January 29, 1988.

The Petitioners alleged that NSP had repudiated the contract. The Petitioners requested that the Commission assign one or more Commissioners to hear this matter, rather than an Administrative Law Judge, and that contested case procedures not be used. The Petitioners requested an expedited proceeding.

On August 3, 1988, the Commission directed NSP to respond to the Joint Venture's petition.

NSP filed its Answer to Petition on August 10, 1988. In general, NSP alleged that the January 3, 1986 Agreement was for a different facility to be built at a different time from that now proposed by the Joint Venture. NSP requested that the matter be referred to the Office of Administrative Hearings for a contested case hearing.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission has jurisdiction over this matter pursuant to Minn. Stat. Section 216B.164 (1986) which governs Cogeneration and Small Power Production. Specifically, Minn. Stat. Section 216B.164, subd. 5 (1986) provides that:

In the event of disputes between an electric utility and a qualifying facility, either party may request a determination of the issue by the commission.

The Commission finds that there are material facts in dispute regarding the terms and conditions of the parties' Agreement. The Commission finds that the resolution of these issues requires a contested case hearing.

The Commission concludes that this matter is a contested case within the meaning of Minn. Stat. Section 14.02, subd. 3 (1986) and must be referred to the Office of Administrative Hearings under Minn. Stat. Section 14.58 (1986).

The Joint Venture requested that the hearing be conducted by one or more Public Utilities Commissioners. Minn. Stat. Sections 14.50 and 14.57(1986) require that all contested case hearings be conducted by the Minnesota Office of Administrative Hearings. Therefore, the Commission cannot entertain the Joint Venture's request.

The Commission notes that the Joint Venture requested an expedited proceeding for this matter and respectfully refers this request to the ALJ.

II. Procedural Outline

The evidentiary hearings on the Joint Venture's petition will be conducted by an Administrative Law Judge appointed by the Chief Administrative Law Judge of the State of Minnesota and will be held in compliance with the applicable laws relating to the Public Utilities Commission, the contested case provisions of the Administrative Procedure Act (Minn. Stat. Ch. 14), the Rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.5100 - 1400.8400, and the Rules of Practice of the Public Utilities Commission, Minnesota Rules, parts 7830.0100 - 7830.4400, to the extent that they have not been superseded by the Rules of the Office of Administrative Hearings.

These statutes and rules may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, 612/297-3000.

The rules provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and

cross examine witnesses, and rights to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence pursuant to Minnesota Rules, part 1400.7000.

Interested persons or groups may petition to intervene as formal parties in the case to present expert testimony and submit briefs. The Administrative Law Judge will hold evidentiary hearings for the presentation of expert testimony by the Counties, NSP, the Minnesota Department of Public Service, and other agencies, persons, or groups who have formally intervened. Parties are advised to bring to the hearing all documents, records and witnesses they need to support their position. During the evidentiary hearings, all parties may present evidence and argument regarding the issues and may cross-examine witnesses.

Any person intending to intervene as a formal party to these hearings must submit a petition for Leave to Intervene to the Administrative Law Judge and serve the petition on all existing parties. The petition must state how the Petitioner's legal rights, duties or privileges may be determined or affected by the Commission's decision in the matter and shall set forth the grounds and purposes for which intervention is sought, and shall indicate the Petitioner's statutory right to intervene, if one exists. All parties have the right to be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law.

A Notice of Appearance (ATTACHMENT A) must be filed with the Administrative Law Judge within 20 days of the date of service of this Order if any party intends to appear at the hearing. The Notice of Appearance is not required if the hearing date is less than 20 days from the issuance of this Order.

A prehearing conference shall be held at 3:30 p.m. on September 21, 1988 at the Administrative Hearings Office, 5th Floor, Flour Exchange Building, 310 4th Avenue South, Minneapolis, 55415. Potential intervenors shall attend the prehearing conference with information which will facilitate the scheduling of hearings permitting all of the parties to present their evidentiary views in a manner and within a time frame which would be as fair and expeditious as possible.

If persons have good reason for requesting a delay of any hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the hearing. A copy of the request must be served on the Commission and all parties.

Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear. Minn. Stat. Section 216B.164, subd. 5 (1986) provides that in the event of disputes between a utility and a qualifying facility, the burden of proof shall be on the utility.

Parties should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. Section 14.60, subd. 2 (1986).

Any question concerning informal disposition of this matter pursuant to Minnesota Rules, part 1400.5900 or discovery of information pursuant to Minnesota Rules, parts 1400.6700 and 1400.6800, should be addressed to Jon Kingstad, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101, 612/296-0413.

All other questions concerning this hearing should be addressed to the Administrative Law Judge assigned:

John W. Harrigan
Attorney at Law
1900 Hennepin Avenue
Minneapolis, Minnesota 55415
612/872-0222

The lobbying provisions of Minn. Stat. Chapter 10A apply to general rate cases. If the document that a person files pertains to ratemaking, rulemaking, certificates of need for large energy facilities or contested case rate proceedings, the person may be required to register with the Minnesota Ethical Practices Board under the lobbying provisions of Minn. Stat. Ch. 10A. Lobbying includes attempting to influence administrative action in rulemaking proceedings, certificate of need cases or contested ratemaking cases. An individual who is engaged for pay or authorized by another individual or association to spend money and who spends more than five hours in any month or more than \$250 in a year to influence administrative action must register with the Board and report disbursements for lobbying purposes, including preparation and distribution of lobbying materials, telephone, postage, media advertising, travel and lodging. The statute provides certain exemptions, including an exception applicable to expert witnesses delivering testimony. Persons are encouraged to telephone the Board at 612/296-1720 for additional information.

ORDER

1. A contested case hearing concerning this matter shall be held commencing with a Prehearing Conference at 3:30 p.m. on September 21, 1988 at the Office of Administrative Hearings, 5th Floor, Flour Exchange Building, 310 South 4th Avenue, Minneapolis, Minnesota 55415. Hearing dates will be set by Order of the Administrative Law Judge.
2. All parties shall furnish adequate responses within 10 days to all reasonable information requests from other parties.
3. The Commission requests that the parties keep the Commission informed of the status of any settlement negotiations.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(SEAL)

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
5th Floor, Flour Exchange Building
310 South Fourth Avenue
Minneapolis, Minnesota 55415

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

In the Matter of the Petition of Rosemount
Cogeneration Joint Venture, Biosyn Chemical
Corporation, and Oxbow Power Corporation
for an Order Resolving a Dispute with
Northern States Power Company

MPUC Docket No. E-002/CG-88-491

OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing: 3:30 p.m., September 21, 1988

Name and Telephone Number of Administrative Law Judge:

John W. Harrigan
612/872-0222

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____

